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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/617,982	07/10/2003	Shimon Hochbaum	200-65500 (PB030022AF)	4256
56929 7590 05/02/2007 LAW OFFICES OF MARK C. PICKERING P.O. BOX 300 PETALUMA, CA 94953			EXAMINER WANG, QUAN ZHEN	
			ART UNIT 2613	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/617,982

Applicant(s)

HOCHBAUM, SHIMON

Examiner

Quan-Zhen Wang

Art Unit

2613

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 11 April 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☒ Applicant's reply has overcome the following rejection(s): drawing objection.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 11, 12 and 14-17.

Claim(s) objected to: _____.

Claim(s) rejected: 1-10, 18-22 and 24-27.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

Continuation of 11. does NOT place the application in condition for allowance because:

Applicant's arguments filed April 11, 2007 have been fully considered but they are not persuasive.

First, Applicant argues, "the Examiner appears to argue that the claims are not patentable because the structure of applicant's admitted prior art is identical to the structure of the claimed invention, differing only in the function performed. Applicant notes, however, that the patentability of a computer-related invention is not based solely upon whether a claimed computer-readable medium (such as a memory) is structurally different from a prior art computer-readable medium. (See MPEP §2106(VI).) In other words, the Examiner may not ignore functional limitations in the claims. If structural differences were required as suggested by the Examiner, no claims to a computer-readable medium would ever be allowable once claims to the physical structure of the particular medium were patented. As a result, the structural similarities between applicant's admitted prior art FIG. 1 and the claimed invention do not prevent patentability." However, in accordance to the final version of "Examination Guidelines for Computer-Related Inventions", "A machine or manufacture claim may be one of two types: (1) a claim that encompasses any and every machine for performing the underlying process or any and every manufacture that can cause a computer to perform the underlying process, or (2) a claim that defines a specific machine or manufacture. When a claim is of the first type, Office personnel are to evaluate the underlying process the computer will perform in order to determine the patentability of the product." The claims of the instant application do not claim any software or instructions of "process" stored in the memory, the analysis for computer-related invention is not applicable. Claim 1 clearly and explicitly claims "an optical line terminal device comprising: ...". It is clear that the claim is an apparatus claim. In accordance to MPEP, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function alone (See MPEP §2114). For this case, the structure of the APA and the claimed invention is identical (see the APA fig. 1 and claimed system in fig.2) and claims 1, 6, and 21 is unpatentable over the APA.

Second, as it is admitted by Applicant, in addition to a first identifier, it is obvious that a memory can store "a value that represents a replacement ONT, the results of an equation, or the user's mother's maiden name" (see page 13 of Applicant's Remarks filed on December 19, 2006). A user can configure the memory to store "the user's mother's maiden name" (also see page 13 of Applicant's Remarks filed on December 19, 2006) and it is obvious that the memory can store a second identifier. In addition, it is well known in the art to have a replacement for a fault network device and store an identifier of the replacement network device. For example, Kidder teaches to have a second network device to replace a fault network device and store an identifier of the replacement network device (paragraphs 0865-0870). Therefore, it would have been obvious for one of ordinary skill in the art at the time when the invention was made to have a second network device to be connected to an end point and configure the controller to store an identification number representing the device, as it is taught by Kidder, in the system of the Admitted Prior Art (prior art fig. 1 of the instant application) in order to provide fault tolerance within a network. It is clear that the prior art references teach every limitation of the structure of the claimed invention, the rejection of claim 1 still stands. For the same reasons, the rejections of claims 2-10 and 21-23 still stand.

Third, Applicant argues, "[t]hus, if a first physical ID value of Kidder is read to be the first identifier, a second physical ID value of Kidder is read to be the second identifier, and a network device 540 of Kidder is read to be the first optical device, then the Kidder reference fails to teach or suggest that the first and second identifiers represent two different optical devices as required by the claims. Instead, Kidder teaches that the first and second identifiers represent the same optical device, i.e., network device 540. As a result, even if table 134 in applicant's prior art FIG. 1 were expanded to include a second active identity number in view of the Kidder reference, the second active identity number would not represent a second optical device as required by the claims, but would instead represent the same optical device. Thus, it is not possible for applicant's admitted prior art in view of Kidder to have first and second active identity numbers that represent two different optical devices as required by the claims. In addition, if a first physical ID value of Kidder is read to be the first identifier, a second physical ID value of Kidder is read to be the second identifier, a first card installed within network device 540 of Kidder is read to be the first optical device, and a second card installed within network device 540 of Kidder is read to be the second optical device, then the Kidder reference fails to teach or suggest that the second card is to be connected after the first card has been removed. As a result, even if table 134 in applicant's prior art FIG. 1 were expanded to include a second active identity number in view of the Kidder reference, the second active identity number would not represent a second optical device that is to be connected to the end of a cable after the first optical device has been removed as required by claims 1 and 6. Instead, the first and second active identity numbers would represent two cards that are both already installed in the network device. The portion of the Kidder reference cited by the Examiner does not teach that the physical IDs of cards not yet installed are stored in table 1014', but instead teaches that the physical ID of a card is stored in table 1014' after the card is installed. (See paragraph 0867 of Kidder.) As a result, the second active identity number would not represent a second card that is connectable or not yet installed to the end of the cable as required by claim 21, but instead would represent a second card that is already installed." Examiner respectfully disagrees with Applicant. Kidder clearly discloses, "[0865] In one embodiment, the network device is authenticated by comparing the physical identifiers retrieved from the network device to the physical identifiers stored either in the Administration Managed Device table or each user profile. If both physical identifiers match, then the network device is authenticated. In addition, if only one physical identifier matches, the network device is also authenticated. One physical identifier may not match because the associated card may have been removed from the network device and replaced with a different card having a different physical identifier. In this event, the NMS server still automatically authenticates the network device without user intervention and may also change the physical identifier in the Administration Managed Device table and perhaps the user profile immediately or schedule an update during a time in which network activity is generally low. [0866] Since electronic hardware may fail, it is important that all network device electronic hardware be removable and replaceable. However, if all electronic hardware is removable, no permanent electrical hardware storing a physical identifier may be used to definitively identify the network device. Using multiple physical identifiers to uniquely identify network devices provides fault tolerance and supports the modularity of electronic hardware (e.g. cards) within a network device. That is, using multiple physical identifiers for authentication allows for the fact that cards associated with physical identifiers used for authentication may be removed from the network device. Through the use of multiple physical identifiers, even if a card associated with a physical identifier used for authentication is removed from the network device, the network device may be authenticated using the physical identifier of another card. If more than two physical identifiers are used for authentication, a network device may still be authenticated even if more than one card within the device is removed as long as at least one card corresponding to a physical identifier being used for authentication is within the device during authentication." Kidder clearly discloses the situation when "one physical identifier (first identifier) may not match because the associated card may have been removed from the network device and replaced with

a different card having a different physical identifier (second identifier)." Kidder further discloses, "Since electronic hardware may fail, it is important that all network device electronic hardware be removable and replaceable. Using multiple physical identifiers to uniquely identify network devices provides fault tolerance and supports the modularity of electronic hardware (e.g. cards) within a network device." It is clear that the combination of the APA and Kidder discloses all the claimed limitations in claims 1-10 and 21-23. Therefore, the rejections of claims 1-10 and 21-23 still stand.

Regarding claim 18, Applicant argues, "applicant's prior art in view of Kidder does not teach the "associating a second identifier" element and the "associating a replacement network device" element. As noted above, if a first physical ID value of Kidder is read to be the first identifier, a second physical ID value of Kidder is read to be the second identifier, and a network device 540 of Kidder is read to be the first optical device, then the Kidder reference fails to teach or suggest that the first and second identifiers represent two different optical devices as required by the claims. Instead, Kidder teaches that the first and second identifiers represent the same optical device, i.e., network device 540. Thus, it is not possible for applicant's admitted prior art in view of Kidder to have first and second active identity numbers that represent two different optical devices as required by the claims. In addition, if a first physical ID value of Kidder is read to be the first identifier, a second physical ID value of Kidder is read to be the second identifier, a first card installed within network device 540 of Kidder is read to be the first optical device, and a second card installed within network device 540 of Kidder is read to be the second optical device, then the Kidder reference fails to teach or suggest that the second card is uninstalled when the second card is associated. As taught by Kidder, the physical ID of a replacement card is associated with a network device in the memory when, in response to an authentication, the NMS server receives the physical ID from the replacement card and the physical ID from a card that matches a physical ID stored in table 1014' shown in FIG. 64 of Kidder. Thus, the replacement card must be installed in the network device of Kidder before the physical ID of the card can be associated with the network device in the memory and, therefore, can not be uninstalled as required by claims 18 and 24. As a result, even if table 134 in applicant's prior art FIG. 1 were expanded to include a second active identity number in view of the Kidder reference, the second active identity number would not represent a second optical device that is not connected to the end of a cable when the second identifier is associated as required by claims 18 and 24. Thus, applicant's admitted prior art in view of the Kidder reference do not teach or suggest the "associating a second identifier" element." Examiner respectfully disagrees with Applicant. The Admitted Prior Art (prior art fig. 1 of the instant application) and Kidder specifically discloses, "even if a card associated with a physical identifier used for authentication is removed from the network device, the network device may be authenticated using the physical identifier of another card." Therefore, it would have been obvious for one of ordinary skill in the art at the time when the invention was made to associate a second identifier with identifier with the single network cable, as it is taught by Kidder, in order to provide fault tolerance within a network. For these reasons, the rejection of claim 18 still stands. For the same reasons, the rejections of claims 19-20 and 24-27 still stand..


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